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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 10/756,843
Filing Date: January 13, 2004
Appellant(s): SECOR ET AL.

Timothy J. Bechen
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 1/20/09 appealing from the Office action mailed 6/4/08.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is substantially correct. Claims 4-23 are finally rejected, but not solely under 35 U.S.C. 102(e) as indicated by the Appellant. 35 U.S.C. 103 is also relied upon in the prior art rejections (see the Grounds of Rejection to be Reviewed on Appeal).

(4) Status of Amendments After Final

No amendment after final has been filed.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,470,384 B1	O'BRIEN ET AL.	10-2002
5,708,820	PARK ET AL.	1-1998

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 15-23 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The applicant's previous claims were directed to a software system. These claims have been cancelled, but the specification still leads to the conclusion that the apparatus of the claimed invention may be implemented in software alone. For example, the abstract of the instant application is directed to an "impact analysis

software system" (Abstract, ln. 1). Furthermore, the examiner does not see a mention of hardware or any description in the specification that would imply the apparatus is hardware alone. Software fails to fall into one of the four statutory classes of invention: process, machine, manufacture, or composition of matter.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 4-10 and 15-20 are rejected under 35 U.S.C. 102(e) as being anticipated by O'Brien et al. (O'Brien), U.S. Patent No. 6,470,384 B1.

As to claim 4, O'Brien discloses a method for handling network events generated in a network in an enterprise (Abstract; Fig. 2), the method comprising:

detecting at least one of a plurality of network events (Fig. 2; Col. 4, ln. 59-60); and

executing an action tree in response to the network event (Fig. 2; Col. 4, ln. 66 – Col. 5, ln. 5), the action tree including instructions based on relationships between enterprise-related data objects (Fig. 2; Col. 4, ln. 66 – Col. 5, ln. 5), the relationships defined by at least one data impact analysis data structure populated with data accessed from a plurality of data sources throughout the network (Fig. 2; Col. 4, ln. 66 – Col. 5, ln. 5; Col. 5, ln. 19-24).

As to claim 15, the claim is rejected for similar reasons to claim 4 above.

As to claim 5, O'Brien discloses the invention substantially as in parent claim 4, including identifying a workstation affected by the detected network event (Fig. 4; Col. 7, ln. 21-24);

determining at least one administrator (Fig. 2, item 27) and at least one business unit affected by the network event (Fig. 2; Col. 5, ln. 62 – Col. 6, ln. 3; Col. 9, ln. 63 – Col. 10, ln. 8); and

contacting the at least administrator regarding the detected network event (Fig. 2, items 27, 34, and 35; Col. 5, ln. 62 – Col. 6, ln. 3; Col. 9, ln. 63 – Col. 10, ln. 8).

As to claim 16, the claim is rejected for similar reasons to claim 5 above.

As to claim 6, O'Brien discloses the invention substantially as in parent claim 5, including the step of determining at least one administrator and at least one business unit includes the determination being made by traversing the impact data analysis data structure (Fig. 2; Col. 4, ln. 66 – Col. 5, ln. 5).

As to claim 7, O'Brien discloses the invention substantially as in parent claim 4, including the execution of the action tree is performed by a policy engine (Fig. 2; Fig. 3; Col. 6, ln. 15 – Col. 7, ln. 65).

As to claim 17, the claim is rejected for similar reasons to claim 7 above.

As to claim 8, O'Brien discloses the invention substantially as in parent claim 4, including the enterprise-related data objects include organization nodes that define the organizational structure of the enterprise (Fig. 2; Col. 4, ln. 66 – Col. 5, ln. 5; Col. 5, ln. 62 – Col. 6, ln. 3; Col. 9, ln. 63 – Col. 10, ln. 8).

As to claim 18, the claim is rejected for similar reasons to claim 8 above.

As to claim 9, O'Brien discloses the invention substantially as in parent claim 8, including the organizational structures include at least one of: a host (Col. 1, ln. 25-28), a communication device (Col. 4, ln. 38-40), a user (Abstract) and a document.

As to claim 19, the claim is rejected for similar reasons to claim 9 above.

As to claim 10, O'Brien discloses the invention substantially as in parent claim 8, including accessing the enterprise-related data objects through a networked database (Abstract; Fig. 2; Fig. 3; Col. 6, ln. 29-34; Col. 6, ln. 66 – Col. 7, ln. 8).

As to claim 20, the claim is rejected for similar reasons to claim 10 above.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 11-14 and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over O'Brien as applied to claims 4 and 15 above, in view of Park et al. (Park), U.S. Patent No. 5,708,820.

As to claim 11, O'Brien discloses the invention substantially as in parent claim 4, including the action tree (Fig. 2; Col. 4, ln. 66 – Col. 5, ln. 5), but is silent on hibernating a network structure, including saving a current state of the network structure to a state database.

However, Park discloses hibernating a network structure, including saving a current state of the network structure to a state database (Abstract).

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of O'Brien by hibernating a network structure, including saving a current state of the network structure to a state database as taught by Park in order to save the state of a network in the event of a failure until it can be properly addressed, at which time, resuming operation (Park: Abstract).

As to claim 21, the claim is rejected for similar reasons to claim 11 above.

As to claim 12, O'Brien and Park disclose the invention substantially as in parent claim 11, including the state database is within an impact server (O'Brien: Fig. 3; Park: Col. 1, ln. 20-25).

As to claim 13, O'Brien and Park disclose the invention substantially as in parent claim 11, including awakening the action tree from a hibernated state in response to a wakeup call message (Park: Abstract).

As to claim 22, the claim is rejected for similar reasons to claim 13 above.

As to claim 14, O'Brien and Park disclose the invention substantially as in parent claim 13, including the wakeup call message is an electronic mail message (O'Brien: Fig. 2, item 34; Park: Fig. 11).

As to claim 23, the claim is rejected for similar reasons to claim 14 above.

(10) Response to Argument

- **Argument 1** (see pages 4-5 of the Appeal Brief)

"First off, the Examiner overlooks the **exact** language of claim 15 which recites 'An apparatus ... comprising ... an event broker ... and an impact server.' The event broker 114 of Fig. 1 is described in the specification as a 'module that provides for real time event processing.' The impact server of Fig. 1 is described as being with the 'logic layer.'"

- **Examiner's Response to Argument 1**

The Examiner respectfully disagrees with the Appellant's interpretation. The embodiment in question is a "module" in the "logic layer" (the Appellant's own terminology) which would in fact lead one to interpret the embodiment as software. One definition of a module, as known in the art, is a part of a program that performs a distinct function. The logic layer is clearly interpretable as software, as in contrast to the physical layer. While certain embodiments discussed in the specification may include hardware, the claim must be interpreted as broadly as is reasonable in light of the specification. The language of the claim clearly covers software embodiments such as a "module" in a "logic layer."

- **Argument 2** (see page 7 of the Appeal Brief)

"[T]he Examiner asserts that under O'Brien, 'mapping network events to appropriate actions is defining relations.' Appellants respectfully disagree and submit this overlooks the exact claim language as recited, which includes that 'the relationships defined by at least one data impact analysis data structure,' the relationships are 'between enterprise-related data objects.'"

- **Examiner's Response to Argument 2**

O'Brien discloses appropriate actions being taken in relationship to specific network events, wherein an arbiter maps the network events to the actions which are performed (Fig. 2; Col. 4, ln. 38-40; Col. 4, ln. 66 – Col. 5, ln. 5). Mapping network events to appropriate actions is defining relationships.

In response to Appellant's argument that the relationships are not defined by a "data impact analysis data structure," the Examiner points out that Figures 9 and 11 clearly show a data structure, an "Action Set" (Fig. 9, item 144), that is mapped to SNMP traps. In fact, Figures 9 and 11 of O'Brien are strikingly similar to Appellant's own data structure in Figure 12 of the Appellant's specification.

The relationships are between enterprise-related data objects as the SNMP traps, actions sets, and managed devices are all under the domain of the Manager (O'Brien: Fig. 2).

- **Argument 3** (see pages 8-9 of the Appeal Brief)

Appellant argues O'Brien fails to disclose "the data impact analysis data structure is populated with data accessed from a plurality of data sources throughout the network."

- **Examiner's Response to Argument 3**

O'Brien discloses the data structure is populated with data accessed from a plurality of data sources (Col. 5, ln. 19-24, "scanner… analyzes… network"). Clearly a scanning agent accesses data on the network, the data being events recognized by SNMP traps (Col. 7, ln. 20-24), and a mapping table stores the previously discussed relationships between sensed events and appropriate actions (Col. 7, ln. 46-53).

Figure 2 of O'Brien clearly shows an illustration of the various agents through which the manager receives information on network events ("Agents", "Network Events", and "Manager"). The Examiner fails to see how this is not data accessed from a plurality of data sources.

Figure 8 of O'Brien also illustrates the "mapping into database record" of events detected by the "Sensor Mapping Method."

- **Argument 4** (see page 9 of the Appeal Brief)

  Appellant argues claims 11-14 and 21-23 are allowable due to their dependency upon the failures of O'Brien in relation to the previous arguments.

- **Examiner's Response to Argument 4**

  The Examiner has refuted the alleged failings of O'Brien.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Brian P. Whipple

/B. P. W./

Examiner, Art Unit 2452

3/10/09

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